

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

MORRIS MILLER #873324

§

v.

§ CIVIL ACTION NO. 6:09cv328

LT. CHRISTOPHER HOLMAN, ET AL.

§

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Morris Miller, an inmate of the Texas Department of Criminal Justice, Correctional Institutions Division proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Miller complained of an incident which occurred on January 30, 2009, in which he was placed against a hallway wall by Lt. Holman. The officer then pressed the front part of his torso against Miller's left side, such that Miller says that he could feel Holman's "erect penis or a protective cup of some sort." Holman then made "pelvic thrusts" against him. Miller says that he reported these actions to Sgt. Travis Morris, the "safe prisons" program coordinator, but that he was never questioned about it and to his knowledge, no investigation was ever conducted. He says that "sexual assault staff on inmate is known" and that Lt. Holman is known by inmates as a "thug," with a lengthy history of abusive and assaultive behavior. Miller says that Warden Rupert is the senior warden at the Michael Unit and as such, is responsible for the behavior of his staff. Miller also

attached copies of grievances which he filed complaining about the incident; the response to one of these grievances indicates that an investigation had been opened.

After review of the pleadings, the Magistrate Judge issued a Report on August 12, 2009, recommending that the lawsuit be dismissed. The Magistrate Judge cited caselaw saying that while the sexual abuse of a prisoner by a guard may in some cases violate the Constitution, isolated episodes of harassment and touching would not. In the present case, the Magistrate Judge stated that Miller's allegations showed no more than an "isolated episode of harassment and touching." The Magistrate Judge also concluded that Miller's claims did not set out constitutionally cognizable allegations of excessive force because the touching was *de minimis* and not sufficient to shock the conscience.

Miller filed objections to the Magistrate Judge's Report on August 25, 2009. These objections include articles from a magazine called the "Prison Legal News" which say that the incidents of sexual abuse and violence are higher in Texas prisons than the national average and that "guards in Texas just look upon inmates as sexual playthings." Miller goes on to assert that Lt. Holman is known as "the fag's friend" because he will keep homosexual lovers housed together and if the homosexual lovers are separated, he will take steps to restore their housing with one another.

Miller's objections do not address the recommended findings or conclusions of the Magistrate Judge with regard to his specific claim; he does not challenge the Magistrate Judge's determination that the incident about which he complains was an isolated, *de minimis* episode. While it may well be that some allegations of sexual abuse of a prisoner by a guard set forth constitutional claims, the allegations advanced by Miller fall well short of doing so. His objections are without merit.

The Court has conducted a careful *de novo* review of the pleadings, testimony, and records in this case, including the Plaintiff's complaint, the Report of the Magistrate Judge, the Plaintiff's objections thereto, and all other pleadings, documents, and records in the case. Upon

such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Plaintiff's objections are without merit. It is accordingly

ORDERED that the Plaintiff's objections are overruled and the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED with prejudice as frivolous and for failure to state a claim upon which relief may be granted. It is further

ORDERED that any and all motions which may be pending in this civil action are hereby DENIED. Finally, it is

ORDERED that the Clerk shall provide a copy of this Memorandum Opinion to the Administrator of the Strike List for the Eastern District of Texas.

SIGNED this 23rd day of September, 2009.



MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE